

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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CARRIE L. CHANDLER PENA,

Plaintiff,

-against-

UNITED STATES BUREAU OF PRISONS,

Defendant.
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06 CV 2480 (NG) (LB)

ORDER

GERSHON, United States District Judge:

The history of this action is detailed in previous orders docketed under 06-CV-2480 and dated May 14, 2007 and July 26, 2007. Familiarity with the facts contained in those orders is assumed. By letter dated July 12, 2007, defendant seeks dismissal of this action as moot. In short, defendant argues that it has fulfilled its Freedom of Information Act (“FOIA”) obligations by releasing to plaintiff the documents she had previously requested. Specifically, on July 10, 2007, defendant “released [to plaintiff] 127 pages in their entirety, released four pages with redactions, and withheld five pages in their entirety pursuant to 5 U.S.C. § 552(b)(6), (7)(C) and (7)(F).” Also on July 10, 2007, defendant informed plaintiff that, if she were dissatisfied with its production, she was entitled to administratively appeal defendant’s decision within 60 days. Plaintiff did not file an appeal. Instead, plaintiff submitted to the court papers opposing dismissal, arguing that defendant’s redactions and withholding of documents was inappropriate.

Defendant’s July 12, 2007 letter request will be construed as a motion for summary judgment. That motion is granted. As an initial matter, as defendant correctly notes, plaintiff’s failure to administratively appeal defendant’s decision, and thus exhaust her administrative

remedies, would normally bar this action. *See Hidalgo v. FBI*, 344 F.3d 1256, 1259 (D.C. Cir. 2003) (finding that a FOIA plaintiff must exhaust administrative remedies before seeking relief in federal court); *Schwarz v. U.S. Department of Treasury*, 131 F. Supp. 2d 142,148 (D.D.C. 2000) (same); *Thomas v. Office of the U.S. Attorney for the E.D.N.Y.*, 171 F.R.D. 53, 55 (E.D.N.Y. 1997) (same). However, given the particular facts of this case, and considering that plaintiff had filed this action prior to defendant's production of the documents in question, I will address the merits of plaintiff's claim.

After reviewing the parties' submissions, I find that defendant has not improperly withheld records responsive to plaintiff's FOIA request. Defendant properly redacted information and withheld documents based on FOIA Exemptions 6, 7(C) and 7(F). *See* 5 U.S.C. §§ 552(b)(6), (7)(C), (7)(F). Accordingly, defendant's motion for summary judgment is granted and this action is dismissed. The Clerk of Court is directed to close this case.

SO ORDERED.

_____/s
NINA GERSHON
United States District Judge

Dated: January 11, 2008
Brooklyn, New York